

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JOINT RULES**

**Call to Order:** By **SEN. JON ELLINGSON**, on January 11, 2005 at 5:00 P.M., in Room 152 Capitol.

#### **ROLL CALL**

##### **Senate Members Present:**

Sen. Jon Ellingson, Chairman (D)  
Sen. Jim Elliott (D)  
Sen. Steven Gallus (D)  
Sen. Kelly Gebhardt (R)  
Sen. Kim Gillan (D)  
Sen. Duane Grimes (R)  
Sen. Dan Harrington (D)  
Sen. Bob Keenan (R)  
Sen. Jesse Laslovich (D)  
Sen. Dan McGee (R)  
Sen. Corey Stapleton (R)  
Sen. Bob Story Jr. (R)  
Sen. Jon Tester (D)

##### **House Members Present**

Rep. John Parker (D), Chairman  
Rep. Michael Lange (R), Vice Chair  
Rep. Debby Barrett (R)  
Rep. Roy Brown (R)  
Rep. Dave Gallik (D)  
Rep. William E. 'Bill' Glaser (R)  
Rep. George Golie (D)  
Rep. Christopher Harris  
Rep. Dennis Himmelberger (R)  
Rep. Monica J. Lindeen (D)  
Rep. Gary Matthews  
Rep. Mark E. Noennig (R)  
Rep. Pat Wagman (R)

**Members Excused:** Rep. David E. Wanzenried (D), Vice Chair  
Sen. Vicki Cocchiarella, (D)

**Members Absent:** None.

**Staff Present:** Peg Holwick, Committee Secretary

Greg Petesch, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**{Tape: 1; Side: A}**

**CHAIRMAN ELLINGSON** announced this was his first time chairing the Joint Rules Committee and asked **Mr. Petesch** to outline expectations of the committee.

**Mr. Petesch** explained the purpose of the committee was to request a joint resolution to draft, introduce, and hear joint rules, and to discuss any further changes included in the resolution prior to its introduction. The suggested changes are included in Exhibit 1.

**EXHIBIT(rus07c01)**

**Mr. Petesch** expounded on and outlined the changes and referred to respective sections in the document. They included:

**1) 10-85 - Harassment prohibited.** This rule works well for temporary but not for permanent employees because, as written, an employee is to report to their supervisor or chief clerk. It seems silly to report offensive behavior, for instance, to the chief clerk when the entity responsible for hiring and firing said individual is the Division Director. **Mr. Petesch** suggested the rule be clarified to define how the interaction between offensive conduct between legislative, temporary session staff, and permanent staff is to be handled and reported. Unfortunately there is a need for such a rule.

**2) 30-30 - Conference committees.** A statement (of the already existing law) is needed to clarify that a conference committee must be conducted and the minutes of the meeting must be met. This would eliminate the practice that has sometimes prevailed in the past of the members of a conference committee agreeing on a report, never meeting in public, and having it signed and adopted. Any enactment of said bill could be challenged as violating the "open meeting law". The bill could be declared void as well as any action taken. Conference committees need to be held as open meetings to avoid potential conflict and subsequent litigation.

**3) 30-70 Appointment of Interim committees.** Last session, the interim committee on Energy and Telecommunications was created. The statute provided that in the Joint Rules, Interim committees are appointed from standing committees. A list of suggested

appointees to the Energy and Telecommunications committee was submitted.

**4) 40-40 Bill requests and introduction--limits and procedures.**

This requires that bills are numbered consecutively in the order of their receipt. However, it has been the practice that the first 15 House bills are reserved every session. This conforms to the practice, hence is not in violation of the rules.

**5) 40-50 Schedules for drafting requests and bill introduction.**

It was recommended that this paragraph be rearranged so it follows in logical order. No substantive changes were proposed.

**6) 40-100 Fiscal notes.** It was suggested that the introductory clause of Subsection 2.0 be removed. This regards electronic copies of a bill for which a fiscal note has been requested to be made available. These documents are public and are available on-line and the suggested change would expedite this process.

**7) 40-200 Transmittal deadlines.** Simplification of this rule would eliminate redundancies and create a single transmittal deadline. Currently, there is a deadline provision of revenue bills originating in the House and having to be transmitted to the Senate and vice versa.

**CHAIRMAN ELLINGSON** asked if there were questions or other proposed changes.

**SEN. GEPHARDT** mentioned that the Senate Rules have changed the name of the Senate Business and Labor Committee to Senate Business, Economic and Labor Affairs Committee. Subsequently, this change should be incorporated into the title under 30-70 under committee structures.

**REP. GALLIK** suggested that the House rule stating that the rules automatically lapse at the start of the new session be added to the Joint Rules. He further explained that the House Rules lapse but the Joint Rules do not, therefore, we go by Mason's Manual of Legislative Procedure (2000).

**Mr. Petesch** said that was not the case, that all rules lapse.

**REP. GALLIK** requested uniformity in the rule.

**Mr. Petesch** expounded on tenure of the rules, specifically, House rule 70-20. The rule adopted by the House remains in effect until removed by house resolution or until a new House is elected and takes office. One session of the Legislature cannot impose its rules onto a succeeding legislative session through use of

resolution. That was the discussion in House Rules Committee. The rule remains in place regardless. That is why at the convening of each session a motion is made at the beginning of each session to adopt Temporary Operating Rules until Joint Rules are adopted by both House and Senate.

**CHAIRMAN ELLINGSON** asked whether or not the effect of 70-20 makes the rules lapse automatically. **Mr. Petesch** affirmed this.

**CHAIRMAN ELLINGSON** then asked whether the rule has no force and effect to which **Mr. Petesch** replied, 70-20 in the House has been adopted through a motion. What this would do is clarify for those who think the rules remain in place after a new legislature is elected and seated, that they do not.

**CHAIRMAN ELLINGSON** suggested that if many changes are proposed, then he would like to direct the discussion to each one of the changes individually, or discuss and then move into executive action.

**SEN. MCGEE** asked **CHAIRMAN ELLINGSON** whether as a point of order, a motion should be taken up to adopt the existing Joint Rules so that subsequent motions can be taken up to amend, to which **CHAIRMAN ELLINGSON** replied that the committee would vote, ultimately, for resolution with suggested changes adopted.

**Mr. Petesch** added that if someone had a suggested change, that voting by each House should occur to include (or not), that change in the drafting in the event that a motion is passed to request a Joint Resolution.

**SEN. MCGEE** inquired whether or not this situation should be treated like a bill, e.g., where a motion is made to have a resolution and then amend that motion.

**Motion:** **SEN. MCGEE** moved that the Legislative Services Division draft a Joint Resolution proposing Joint Rules for the 59th Legislature and that the Joint Rules for the 59th be the same as the 58th.

**Discussion:**

**Mr. Petesch** explained that temporary joint rules already exist because they were adopted as such by motion in both houses. In that case, **SEN. MCGEE** conjectured the proper motion would be to entertain whatever changes to the rules on an individual basis.

**Motion:** SEN. MCGEE withdrew the first motion and a substitute motion was offered to propose amendments from Mr. Petesch to the current adopted temporary joint rules.

Mr. Petesch confirmed that no second to the motion was necessary.

**Discussion:**

REP. PARKER retorted: "If it makes sense then I think we should do it".

SEN. GALLUS questioned whether or not a suggested Senate amendment to House revenue bills must be transmitted to the Senate by the House on or before the 82nd day (2nd to last page of Exhibit 1). Under the proposed amendment, would that mean that any Senate amendments to the House revenue bills must be transmitted by 71st day? Mr. Petesch referenced section c. ii which combines transmittal of amendments to revenue bills of either house to be the 82nd day.

REP. NOENNIG sought clarification that they were referring to these sheets and not REP. GEPHARDT or REP. GALLIK'S amendment, to which Mr. Petesch said they were.

**Vote:** Motion carried unanimously in both House and Senate  
REP. WANZENRIED and SEN. COCCHIARELLA voted by Proxy.

**Motion:** SEN. ELLIOTT moved to change the name of the committee Business and Labor to Business and Economic Affairs Committee, Rule 37.

**Discussion:** None.

**Vote:** Motion carried unanimously by voice vote in both House and Senate. REP. WANZENRIED and SEN. COCCHIARELLA voted by Proxy.

**Motion:** REP. GALLIK moved that the Joint Rules be amended to include a joint resolution that is the same as House rule 70-20 to read that tenure of the rules, that is, rules adopted by the house and senate joint rules, remain in effect until removed by joint resolution or until a new legislature is elected and takes office.

**Discussion:** SEN. TESTER asked Mr. Petesch to expound on whether a resolution could have any level of enforcement on the next legislative session. Mr. Petesch responded that there are statutorily authorized uses of resolutions. One of them is to approve certain building construction. And because the use of a

resolution for that purpose is statutorily authorized, that does have effect. But a resolution by its very terms is a very limited tenure. It is not a law and is not binding. That is why when you make resolutions you "urge" someone to do something, not "require" someone to do something, unless a statute so states.

**SEN. TESTER** then asked how **SEN. GALLIK** would make this change? **Mr. Petesch** explained that **SEN. GALLIK** was proposing enactment of a new joint resolution. A new joint rule would clarify that the current joint resolutions go away when a joint resolution is either passed, changed, or when the 60th Legislature is convened. That way, the practice of adopting temporary joint resolutions is changed when organizing each house.

**REP. GALLIK** reiterated that he brought this motion forward to create uniformity.

**Vote:** Motion carried Unanimously in the House and 10-3 in the Senate by roll call vote with **McGEE**, **KEENAN**, **GEPHARDT** voting no. **REP. WANZENRIED** and **SEN. COCCHIARELLA** voted by Proxy.

**CHAIRMAN ELLINGSON** verified with **Mr. Petesch** that his amendment would then be inserted in the appropriate location in the joint rules.

*{Tape: 1; Side: B}*

**REP. BROWN** requested clarification on 30-50, subsection 3, and the necessity of being present for voting on various committees. **Mr. Petesch** said the rule precludes Proxy voting. **REP. BROWN** then asked about the acceptability of the practice of keeping the vote open for people who are not present to vote later. **Mr. Petesch** offered no historical perspective but believed the practice is not precluded by the rules. **CHAIRMAN ELLINGSON** wondered if that should be left up to committee chairs. **SEN. LINDEEN** said that holding the vote open has occurred before.

**Motion:** **REP. BROWN** Proposed an amendment to the joint rules making it such that the members should be present for the voting and that the voting should not be held open for a later time in the joint sub committees.

**SEN. GALLUS** suggested that the chairman be afforded enough time to vote and to let the votes stay open.

**SEN. STORY** countered that the chair should be present.

**REP. NOENNIG** professed ignorance and questioned why the rule exists to which no one had an answer.

**REP. STORY** suggested that the Committee on Committees meet and appoint joint subcommittee members.

**REP. GALLUS** asked **Mr. Petesch** whether in 30-50, subsection 3, if all 3 requirements needed to be satisfied?

**REP. NOENNIG** questioned whether or not the rules should be amended to hold the vote open, for how long, and how would such a rule be drafted?

**SEN. TESTER** questioned **REP. BROWN** whether the motion applied strictly to Joint Subcommittee on Finance and Claims or to all joint subcommittees. **SEN. BROWN** answered that it applies only to joint subcommittee votes.

**SEN. ELLIOTT** asked if **SEN. TESTER** served on two sub committees and inquired whether by holding the vote open, the Chairman can vote on all six sub committees.

**REP. BROWN** was referring only to the Chairman of Appropriations and the Senate Finance and Claims sub committees and said that no vote should be held open.

**SEN. MCGEE** asked **Mr. Petesch** what rules govern the joint subcommittees to which **Mr. Petesch** replied, "The joint rules."

**SEN. MCGEE** continued to explain that the joint rules currently read that either house has fewer members in the joint subcommittees the chair represents the house with the fewer members so he can vote, is it not already in the rules there is no opportunity for a late vote.

**Mr. Petesch** stated that the rule would not allow Proxy voting but that the question of when the vote is tallied is not addressed. So the practice that sometimes has occurred in the past of leaving the voting open for a "time certain" is not precluded by the rules.

**SEN. MCGEE** then asked if **REP. BROWN's** motion was to put in a subsection D that says that votes may not be held open and asked **Mr. Petesch** to come up with the proper wording.

**SEN. TESTER** summarized, for clarification, what **SEN. BROWN** wants in the rule. It applied only to the Chairman of Finance and subsequently, the vote would not be held open for the chairman of Finance on the committees he has not been appointed to. If **Mr.**

**Petes**ch wanted to add that sentence with the proper wording, then he would support it.

**Vote:** Motion carried in both House and Senate by voice vote. with REP. GALLIK, REP. LINDEEN, AND REP. HARRIS, SEN. HARRINGTON, SEN. ELLIOTT and SEN. GALLUS voting no. REP. WANZENRIED and SEN. COCCHIARELLA voted by Proxy.

**Motion:** CHAIRMAN ELLINGSON moved that a resolution be drafted to incorporate changes to the joint rules.

**Discussion:** None.

**Vote:** Motion carried unanimously by voice vote in both House and Senate. REP. WANZENRIED and SEN. COCCHIARELLA voted by Proxy.



**ADJOURNMENT**

Adjournment: 6:01 P.M.

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SEN. JON ELLINGSON, Chairman

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PEG HOLWICK, Secretary

JE/ph

Additional Exhibits:

**EXHIBIT ([rus07cad0.TIF](#))**